

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-238-T – ORDER NO. 2004-577
NOVEMBER 23, 2004

IN RE: Application of Frady Service, Inc. for a Class) ORDER GRANTING
E (HHG) Certificate of Public Convenience) CLASS E CERTIFICATE
and Necessity.)

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Frady Service, Inc. (the “Applicant”), 1448 West Main Street, West Union, South Carolina, 29696, for a Class E Certificate of Public Convenience and Necessity to transport commodities as follows:

Household Goods, as defined by R. 103-210(1)

Between points and places in Anderson, Greenville, Cherokee, Spartanburg, Pickens & Oconee Counties; and, from points and places in these counties to points and places in South Carolina and from points and places in South Carolina to points and places in these counties.

The Commission’s Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene were received in this matter.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides in part:
No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.
2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.
3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.
4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:
 - (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
 - (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and

able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

² By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

EVIDENCE OF RECORD

The hearing on the Application was held on November 10, 2004, at 10:30 A.M. in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. Bonnie D. Shealy, Esquire, appeared representing the Applicant. Applicant presented the testimony of William H. Frady, Jr., President of Frady Service, Inc.; John Frady, Vice-President of Frady Service, Inc.; Sherri Orr of Frady Service, Inc. and Pam Mathis. F. David Butler, General Counsel, represented the Commission Staff. The Staff presented

the testimony of L. George Parker, Jr., Director of the Commission's Transportation Division.

Ms. Shealy requested that selected pages from the 2004 South Carolina Statistical Abstract prepared by the S.C. Budget and Control Board be entered into the record as a self-authenticating exhibit pursuant to S.C. Rules of Evidence 902(5). The pages included a table which illustrated the population and population projections from 2000-2005 which showed significant population increases for Anderson, Cherokee, Greenville, Oconee, Pickens and Spartanburg Counties and a table which listed total housing units by county for 1980, 1990, and 2000. The table showed the increases in the number of total housing units in the above referenced counties from 19% to 28.3%. In addition, there was a map which showed South Carolina's projected growth in these counties from 2000 to 2010. The Commission granted the request and the statistical information was entered into the record as a hearing exhibit.

William H. Frady, Jr. is the president of Frady Service, Inc. Mr. Frady testified about his experience and background in the moving industry. He discussed the history of the company which included an explanation of the company's prior certification as a household goods mover. The company formerly held the following Class E Certificates of Public Convenience and Necessity: Certificate No. 696 D issued in Docket No. 17,842, Order No. 17,947, on October 15, 1974; Certificate No. 142 B issued in Docket No. 78-295-T, Order No. 78-382, on July 5, 1978; and Certificate No. 2247 issued in Docket No. 83-110-T, Order No. 2247, on August 24, 1983. Under these certificates, Mr. Frady discussed the scope of authority which included points and places in Anderson,

Cherokee, Greenville, Oconee, Pickens and Spartanburg Counties; and points and places from these Counties to all points and places in South Carolina; and from all points and places in South Carolina to these Counties. He testified that his former scope of authority would allow him to pick up a move in Pickens and deliver it to Columbia and pick up a move in Columbia and deliver it to Pickens. The company is seeking to re-instate the same authority in its present application. Mr. Frady testified that the company intends to join the South Carolina Tariff Bureau and that he is familiar with the motor carrier statutes and regulations.

Mr. John Frady is the vice president of Frady Service, Inc. and testified concerning the company's business plan and financial ability to provide services in the state. He also testified that he and William H. Frady, Jr. were willing to provide additional financial support to the corporation if needed. John Frady provided evidence that the Applicant had purchased a truck, obtained office space, purchased insurance and obtained equipment to begin operations. Ms. Sherri Orr is the Secretary-Treasurer of Frady Service, Inc. who will be in charge of the daily operations of the company. She provided evidence concerning the current operations and the number of requests for Frady's services over the last few months. She also provided information concerning the company's line of credit and explained why the cash flow decreased during the month of September.

Ms. Pam Mathis was the shipper witness for the company who testified about the need for another moving company in the area. She indicated to her knowledge there were no local moving companies. She is currently employed by Mariner Health of Seneca. She

provided evidence concerning her employees' relocation experiences in the upstate and explained her company's reimbursement procedure for moving employees. She is in a position to refer her employees to a moving company. In addition, she testified concerning her own personal experiences in moves. Ms. Mathis has moved ten times in the last five years and has had problems finding a moving company to relocate her. Ms. Mathis testified that there was sufficient demand for another moving company in the upstate. She indicated that she has known William Frady for over thirty years and would recommend Frady Service if the Commission approves the application. Her testimony supported the Applicant's claim that there is a need for the services they would offer.

There were no intervenors in this matter, and no testimony was offered in opposition to the Application.

L. George Parker, Jr., Director of the Commission's Transportation Division, testified that he had visited the Applicant's place of business in West Union and inspected the vehicle which he described to be in excellent condition. Photographs taken by Mr. Parker of the location and vehicles were entered into the record of this case.

At the close of the hearing, the Commission asked that the officers submit personal financial statements to be filed as an exhibit by the Applicant prior to consideration of the Application by the Commission. These financial statements were filed as an exhibit and received by the Commission on November 12, 2004.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Frady Service, Inc. desires to provide moving services of household goods within and between points and places in Anderson, Greenville, Cherokee, Spartanburg, Pickens & Oconee Counties; from points and places in these counties to points and places in South Carolina; and from points and places in South Carolina to points and places in these counties.

2. The Applicant, Frady Service, Inc. is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated by (1) evidence of an acceptable safety rating, (2) that there are no outstanding judgments pending against Frady Service, Inc. and (3) that Frady Service, Inc. will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record contains (1) a certification that Frady Service, Inc. through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Frady Service, Inc. “Able” was demonstrated by the evidence of record which reveals that Frady Service, Inc. has the necessary truck and equipment with which to perform moving services, has insurance which meets the minimum requirements set by this Commission, and will undergo an inspection by personnel from this Commission of its equipment. The evidence of record also indicates that Frady Service, Inc. possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. “Willingness” was demonstrated by the filing of the Application and the testimony of the witnesses indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Frady Service, Inc. are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant establish that the public convenience and necessity warrant the issuance of the permit requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Frady Service, Inc. has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Frady Service, Inc. has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which Frady Service, Inc. proposes to serve requires the services proposed by the Application.

3. Based on the conclusions above, that Frady Service, Inc. has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Frady Service, Inc. should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):

Between Points and places in Anderson, Greenville, Cherokee, Spartanburg, Pickens & Oconee Counties; from points and places in these counties to points and places in South Carolina; and from points and places in South Carolina to points and places in these counties.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Frady Service, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Anderson, Greenville, Cherokee, Spartanburg, Pickens & Oconee Counties; from points and places in these counties to points and places in South Carolina; and from points and places in South Carolina to points and places in these counties.

2. Frady Service, Inc. shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by 26 S.C. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26

(1976), as amended, a Certificate shall be issued to Frady Service, Inc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)